

RECEIVED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

DEC 28 2007

GARY GREGG,

Plaintiff,

vs.

J. WALTER WOOD, Jr., et., al.

Defendants.

CLERK
U.S. DISTRICT COURT
MIDDLE DIST. OF ALA.

Civil Action No:

2:07-CV-1131-WKW

NOTICE OF REMOVAL

To the honorable judges of the United States District Court for the Middle District of Alabama:

On this the 28th day of December, 2007, the undersigned attorney, on behalf of the Defendants J. Walter Wood, Jr., Alabama Department of Youth Services, and all Defendants herein, hereby removes and gives Notice of Removal of the above styled action filed by Plaintiff/Petitioner in the Circuit court of Montgomery County, Alabama, Civil Action number 03-CV-2007-2016, copies of which are attached hereto, to the United States District Court for the Middle District of Alabama, Northern Division. You are also advised that the Defendants, on filing such notice of removal in the office of the Clerk of the United States District Court for the Middle District of Alabama, Northern Division, also filed copies of such notice with the Clerk of the Circuit Court for Montgomery County to effect removal pursuant to 28 USC Section 1446.

As grounds wherefor the Defendants state the following:

1. The Plaintiff/Petitioner alleged violation of the Plaintiff's Constitutional due process of law.
2. Service of process in this case was had on Defendants on December 27, 2007.

3. The state court has scheduled a hearing on the Plaintiff's petition for a temporary restraining order based on alleged violation of Plaintiff's due process rights. Said hearing is scheduled to take place on December 31, 2007, at 9:00 a.m. in Courtroom 4-A of the Montgomery county Courthouse, Montgomery, Alabama. The undersigned attorney will be out of the state at that time, and the Circuit Court judge in state court has been unavailable to reschedule said hearing.

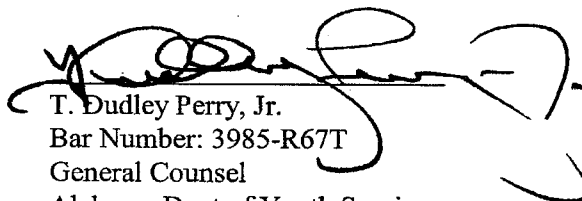
3. Defendants have filed no pleadings or papers in this cause in the state court, and the time for filing any responsive pleading has not expired.

4. The Defendant has good defenses to this action. Specifically, the provisions of the Alabama Administrative Procedures Act (the "APA") will apply to any personnel action effecting the Plaintiff's employment rights, and the Defendants will follow the APA in this matter. The Plaintiff's claim of entitlement to preliminary relief or any other injunctive relief is therefore totally without merit.

5. Copies of all processes, pleadings and orders are attached hereto.

Done this 28th day of December, 2007.

Respectfully submitted



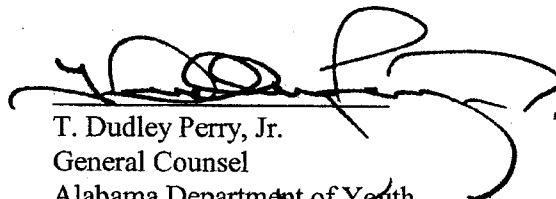
T. Dudley Perry, Jr.
Bar Number: 3985-R67T
General Counsel
Alabama Dept of Youth Services
Post Office Box 66
Mt. Meigs, AL 36057
Telephone: (334) 215-3803
Fax: (334) 215-3872

E-Mail: dudley.perry@dys.alabama.gov

CERTIFICATE OF SERVICE

I hereby certify that on the 28th of December 2007, I have mailed a true and correct copy of the foregoing document by United States mail, postage prepaid, to the individuals at the addresses shown below:

J.M. (Mike) Winter, Jr. Esq.
Suite 300-A
300 Water St.
Montgomery, AL 36104



T. Dudley Perry, Jr.
General Counsel
Alabama Department of Youth
Services

State of Alabama
Unified Judicial System

SUMMONS

PLAINTIFF'S
EXHIBIT
A

Case Number

Form C-34

Rev 6/88

- CIVIL -

03-CV-2007

2016

IN THE Circuit DEC 27 2007 COURT OF MONTGOMERY COUNTYPlaintiff GARY GREGGv. Defendant ALABAMA DEPT. OF
YOUTH SERVICES, ET AL.NOTICE TO MR. J. WALTER WOOD, JR. -- 1000 INDUSTRIAL SCHOOL
ROAD, MONTGOMERY, AL 36107THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR PLAINTIFF'S ATTORNEY JM (MIKE) WINTER, JR. WHOSEADDRESS IS Suite 300-A, 300 WATER ST., MONTGOMERY, AL 36104

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN _____ DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

TO ANY SHERIFF OR ANY PERSON AUTHORIZED by the Alabama Rules of Civil Procedure:

☒ You are hereby commanded to serve this summons and a copy of the complaint in this action upon the defendant.☐ Service by certified mail of this summons is initiated upon the written request of _____ pursuant to the Alabama Rules of Civil Procedure.Date 12/21/07Melissa Bittner
Clerk/RegisterBy: mg☐ Certified Mail is hereby requested.

Plaintiff's/Attorney's Signature

RETURN ON SERVICE:

☐ Return receipt of certified mail received in this office on _____ (Date)☐ I certify that I personally delivered a copy of the Summons and Complaint to _____ in _____ Alabama on _____ (Date)

Date

Server's Signature

Address of Server

Type of Process Server

Exhibit A

**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA
CIVIL DIVISION**

GARRY GREGG

<>

<>

v.

<> CASE NUMBER: 03--CV--
<> 2007-- 2014

J. WALTER WOOD, JR., in his official capacity as the <>
Executive Director of the Alabama Department of <>
Youth Services, <>
ALABAMA DEPARTMENT OF YOUTH SERVICES <>
ALABAMA STATE PERSONNEL DEPARTMENT, and <>
THOMAS FLOWERS, in his official capacity as State <>
Personnel Director <>
Defendants <>

2007 DEC 21 PM 2:44

FILED
CIRCUIT COURT OF
MONTGOMERY COUNTY

EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER

COMES NOW Plaintiff Garry Gregg, by and through his undersigned counsel, moving this Honorable Court to issue a Temporary Restraining Order, pending its judgment as to Plaintiff Gregg's Complaint for a Declaratory Judgment. As grounds for this relief, Plaintiff Gregg declares as follows:

1. Defendant Alabama Department of Youth Services (hereafter DYS) has notified both Plaintiff Gregg, and Plaintiff's undersigned counsel, that DYS intends to terminate Plaintiff's employment with DYS for off-duty non-criminal non-tortious conduct.
2. Execution of this illegal and unmerited intention would violate several statutory provisions of the laws of the State of Alabama, as well as the Alabama Administrative Code.
3. Execution of this illegal and unmerited intention would constitute an improper taking of Plaintiff Gregg's property interest in his employment.
4. Plaintiff Gregg has a substantial likelihood of prevailing in this matter before this Honorable Court.
5. Plaintiff Gregg will suffer irreparable injury without this relief, inasmuch as Plaintiff's burden of proof in this Court at this time is the burden of proof that best fulfills the Constitutional and statutory requirements for the Due Process of Law. Duly authorized personnel at DYS have implicitly indicated that Plaintiff's pursuit of justice in this Court at this time will result in his immediate termination, in order to thereby deny this Court jurisdiction at this time.

In addition, denial of this Court's jurisdiction in this case at this time would unnecessarily burden the relevant judicial and quasi-judicial system with proceedings that can and should be resolved by this Court in the near future. Resolution by this Court at this time will ultimately spare this Court's time and our State's financial resources.

6. The threatened damage to the Plaintiff substantially exceeds any damage that this relief might cause to the Defendants.

7. The relief sought will not be adverse to the public interest.

8. Execution of this illegal and unmerited intention would unnecessarily vitiate Plaintiff's ability to fully exercise his rights to the Constitutional and statutory Due Process of Law to which he is entitled.

9. As a direct and proximate consequence of Plaintiff notifying undersigned counsel of his intention yesterday afternoon to file this cause of action, counsel will file Plaintiff's Complaint for a Declaratory Judgment on December 26, 2007, the first business day after today.

Plaintiff Garry Gregg would also submit that, based on undersigned counsel's preliminary research, to-wit his initial investigation of case law and his consultation with the Alabama State Employees Association, that this controversy is a case of first impression in Alabama.

WHEREFORE Plaintiff Garry Gregg prayerfully requests that this Honorable Court issue a Temporary Restraining Order. **WHEREFORE** Plaintiff Garry Gregg prayerfully requests that this Court, during the pendency of this Restraining Order, require Defendants to submit to this Plaintiff and to this Court legal justification for terminating Plaintiff Gregg's employment for off-duty non-criminal non-tortious conduct.

COPY

I.M. (Mike) Winter, Jr. (WIN036)
Attorney for Mr. Garry Gregg

Suite 300-A; 300 Water Street
Montgomery, Alabama 36104
(334)263-5787
MikeWinter@WinterLegal.net

**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA
CIVIL DIVISION**

GARRY GREGG

<>

<>

v.

<> CASE NUMBER: 03--CV--

<> 2007--_____

J. WALTER WOOD, JR., in his official capacity as the <>

Executive Director of the Alabama Department of <>

Youth Services, <>

ALABAMA DEPARTMENT OF YOUTH SERVICES <>

ALABAMA STATE PERSONNEL DEPARTMENT, and <>

THOMAS FLOWERS, in his official capacity as State <>

Personnel Director <>

Defendants <>

ORDER

Upon consideration of Plaintiff Garry Gregg's Motion for a Temporary Restraining Order; I therefore

ORDER, ADJUDGE, and DECREE that Plaintiff's motion is due to be, and therefore is, **GRANTED.**

DONE THIS _____ DAY OF DECEMBER, 2007

COPY

Honorable Circuit Court Judge
Montgomery County, Alabama

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing motion upon the Defendants in this cause of action. I have posted a copy of same to these Defendants, by prepaid registered mail.

DONE THIS 21st DAY OF DECEMBER, 2007

COPY

I.M. (Mike) Winter, Jr. (WIN036)
Attorney for Mr. Garry Gregg

IN THE CIRCUIT COURT
OF MONTGOMERY COUNTY, ALABAMA

Garry Gregg,
Plaintiff,

vs.

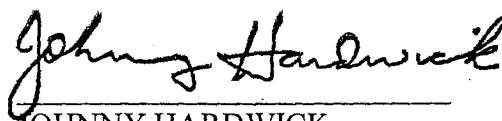
CV-2007-2016

J. Walter Wood, Jr., et al.,
Defendants.

ORDER

It is hereby **ORDERED, ADJUDGED AND DECREED** that the aforesaid matter is set for a **TRO Hearing** Monday, December 31st, 2007 at 9:00 a.m. in Courtroom 4-A of the Montgomery County Courthouse, Montgomery, AL.

Done this 21st day of December 2007.

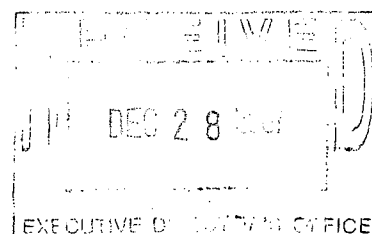

JOHNNY HARDWICK,
CIRCUIT JUDGE

cc:

Hon. Mike Winter
300 Water Street, Suite 300-A
Montgomery, AL 36104

Alabama Department of Youth Services
P.O. Box 66
Mount Meigs, AL 36057

Alabama Department of Personnel
300 Folsom Administrative Building
64 N. Union Street
Montgomery, AL 36130



Court Name: U S DISTRICT COURT - AL/M
Division: 2
Receipt Number: 4602002652
Cashier ID: khaynes
Transaction Date: 12/28/2007
Payer Name: DUDLEY PERRY JR

CIVIL FILING FEE
For: DUDLEY PERRY JR
Case/Party: D-ALM-2-07-CV-001131-001
Amount: \$350.00

CHECK
Check/Money Order Num: 4501
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

GARRY GREGG V. J. WALTER WOOD ET AL